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July 2, 2010

Delta Stewardship Council

Terry Macaulay, Deputy Executive Officer, Strategic Planning
650 Capitol Mall
Sacramento, CA 95814Sent via e-mail interimplan@deltacouncil.ca.gov.**Sacramento Regional Wastewater
Treatment Plant****8521 Laguna Station Road****Elk Grove, CA 95758-9550****Tele: [916] 875-9000****Fax: [916] 875-9068**Subject: First Draft Interim Plan, Prepared for Consideration by the Delta
Stewardship Council, California Water Code Section 85084, June
14, 2010**Board of Directors
Representing:**

County of Sacramento

County of Yolo

City of Citrus Heights

City of Elk Grove

City of Folsom

City of Rancho Cordova

City of Sacramento

City of West Sacramento

The Sacramento Regional County Sanitation District (SRCSD) appreciates the opportunity to provide comments on the June 14, 2010 "First Draft Interim Plan" (Interim Plan). SRCSD supports efforts and research to find solutions to address the myriad of conditions confronting the Delta and its long-term sustainability. We understand the important task the Delta Stewardship Council (Council) has before it to develop an Interim Delta Plan. However, we have a number of concerns with the direction and content suggested by this draft of the Interim Plan, discussed below.

Generally, SRCSD is concerned about the short time frame within which the Council will develop the Interim Plan. SRCSD is concerned that the timeframe for developing the Interim Plan is too short to allow any meaningful public input and Council deliberation. As a result, the Council will likely, by default, rely on other documents such as the Delta Vision Strategic Plan, or the Bay Delta Conservation Plan (BDCP). This approach was neither favored nor encouraged by last Fall's "Delta Legislation" that created the Council and required development of an *independent* Delta Plan to achieve the "co-equal goals."

While SRCSD recognizes the need to develop an effective Interim Plan in a relatively short time frame, the scope of the current draft Interim Plan is simply too broad. The Interim Plan should be much more narrowly focused so that it can be effectively implemented in the near term.¹ Reliance and/or incorporation of other documents, such as the Delta Vision Strategic Plan, whose scope is beyond the appropriate bounds of an Interim Plan, raise additional significant concerns. This concern has been raised by several interested participants at the Council's most recent meetings and it is reflected in written comments submitted to the Council.

Mary K. Snyder
District EngineerStan R. Dean
Director of Policy and PlanningPrabhakar Somavarapu
Director of OperationsMarcia Maurer
Chief Financial OfficerClaudia Goss
Director of Communications

¹ SRCSD is also aware that the Council will not conduct any substantive CEQA review of the Interim Plan. Given the scope of the proposed draft Interim Plan, however, CEQA will likely apply to the Council adoption of the Interim Plan.

There are also significant questions and concerns regarding governance and funding and SRCSD notes that the draft Interim Plan has not satisfactorily addressed our concern regarding inaccurate or incorrect information being carried forward as fact.

Following are SRCSD's general comments on these issues, and specific comments on the Appendices.

General Comments on Over-Commitment

First, much of the content of the Draft Plan is deferred to a "second draft" of the Interim Plan. Given that the deadline for the Council to adopt an Interim Plan is August 27, 2010, it is doubtful that any meaningful development of and public comment on such a "second draft" will materialize. This, coupled with other difficulties, renders it very difficult to provide meaningful comment and input.

Second, it is difficult to discern what the Interim Plan would be and what effect it would have. The "First Draft" is substantial in content, but diffuse, leaving it unclear what the consequence of the Interim Plan would be. The First Draft also appears to mingle Interim Plan and Delta Plan concepts. Overall, we believe the First Draft attempts too much. We recommend that the Interim Plan be much more focused on facilitation of near term measures that can be accomplished while the Delta Plan is being developed, such as emergency preparedness, promoting regional sustainability, incorporating the Delta Protection Commissions Resource Management Plan, assisting the Department of Water Resources conservation and efficiency targets for water consumption, assisting existing restoration efforts and those projects identified by the legislation in Water Code section 85085.

The Council may wish to inventory activities that have a relationship to the goals of the Delta legislation and to which the Council will pay attention, but it is neither efficient nor appropriate to attempt to drive these activities in the Interim Plan. We believe the Interim Plan should focus on facilitation of measures that will be accomplished in the very near future. Again, the Council is in the process of developing the Delta Plan, which will address the same information contained in the Interim Plan. Instead of engaging in a redundant effort, the Interim Plan should address issues that require immediate attention and that can be implemented quickly.

Third, the Interim Plan relies heavily on the Delta Vision Strategic Plan (Strategic Plan). While certain aspects of the Strategic Plan should be considered, it does not govern either the Interim Plan or the Delta Plan.

Fourth, the Interim Plan emphasizes the policy objectives in Water Code section 85020. It is not inappropriate to recognize these objectives, but we believe it is inappropriate to treat the objectives as a source of legal power for the Commission.

Fifth and related, SRCSD has specific concerns with Appendix II which include goals and actions taken directly from the Strategic Plan. SRCSD raised concerns about this language and suggested revisions that were never incorporated into the Strategic Plan. Notwithstanding what appear to be clear deficiencies in the Strategic Plan, the draft Interim Plan simply adopts the same defective language. Moreover, this Appendix identifies a variety of measures that are outside the authority or control of the Council, and much of the content of Appendix II cannot occur in the timeframe of an Interim Plan. Our concerns with Appendix II are detailed in the section below, "Specific Comments on Appendices."

Finally, the Interim Plan should be focused, understandable, and usable. There is considerable risk the Interim Plan will evolve into little more than a political tool, an outcome that the Council should avoid.

General Comments on Governance & Funding Issues

The Draft Interim Plan does not include any “suggested language” to address the requirements of Section 85020(h), and instead suggests that the “Second Draft” of the Interim Plan will address issues related to “governance” and funding issues. At a minimum, SRCSD is concerned about the lack of sufficient time, given the August 27, 2010 deadline for adoption of an Interim Plan, to develop specific and reasonable plans for adequate funding of the Council and its planned activities. Given the potential scope of the Council’s anticipated authorities, and the anticipated cost to millions of Californians that the Council’s activities will encompass, we believe it is vitally important that the public and interested parties have a more specific understanding of how the Council envisions paying for both the Council’s ongoing maintenance, as well as the hundreds of activities anticipated in the Final Delta Plan. This need is even more important in light of the recent pronouncements from the Administration and Members of the Legislature recommending that the “Water Bond” scheduled for a statewide vote in November of this year, be postponed.

Along these lines, the SRSCD is also concerned that the notion of “beneficiary pays” or “proportional funding” for the maintenance of the Council and for all of its planned activities is never mentioned in this Draft Interim Plan. This omission is made more glaring considering the Delta Vision Strategic Plan specifically identifies the need to address a responsible funding system as “required for success of a governance entity” that is predicated on the “beneficiary pays” principle. It would be fundamentally unfair to those who live in and around, and whose lives are daily intertwined with the Delta, for the Council’s Final Delta Plan to ignore this “required” element for successful governance of the Delta, and the “dual goals” envisioned by the Legislature. To that end, the Council would be well-advised to identify any proposed future funding plans as soon as possible so that all issues surrounding such plans can be completely and honestly vetted through the public process

Specific Comments on Appendices

Appendix II: Strategies and Actions from the Delta Vision Strategic Plan (Illustrative Only). Action 3.5.1 under “Strategy 3.5” states: “Require the Central Valley Regional Water Quality Control Board to conduct three actions:” The actions include: “immediately re-evaluate wastewater treatment plan/discharges into Delta waterways and upstream rivers” The Council has no authority to require such action. (Note also that permitting by the Regional Water Board will not be a “covered action” under the Delta Plan. Water Code, section 85057.5(b).) This item, moreover, is utterly unrealistic and does not reflect an understanding of the cycle of permitting under the Clean Water Act or an understanding of California Water Code. Parenthetically, SRCSD specifically requested in our October 16, 2008 comment letter on the Fifth Draft of the Strategic Plan that the phrase “... are fully protective of human health and ecosystem needs” be replaced with “...ensure reasonable protection of beneficial uses”, as this is consistent with California Water Code.

It would be appropriate to identify Regional Water Board permitting activities as a matter the Council will monitor, but the suggestion that the Council will direct the process is inappropriate. Similarly, the Interim Plan identifies various actions pertaining to water quality that do not reflect an awareness of ongoing activities. These activities include, but are not limited to, National Academy of Science Review, Central Valley Drinking Water Policy Work Group, Regional Board triennial review obligations, Regional Boards and State Board Strategic Plan activities, Interim Federal Action Plan

for the Bay-Delta, the Bay Delta Conservation Plan, the Delta Science Program, Department of Pesticide Regulation Pyrethroid Reevaluation, CV-SALTS, Department of Water Resources Municipal Water Quality Monitoring Program, the Interagency Ecological Program, etc., related to Delta water quality. The appropriate approach for the Council with respect to these activities is to remain apprised and, as appropriate, make use of the relevant products from these actions in the Delta Plan.

Additionally, requiring the establishment of Total Maximum Daily Load (TMDL) programs for organic carbon and inorganic mercury from tributary watersheds as a near term action is unrealistic and under the Regional Boards jurisdiction. The recent Methyl Mercury TMDL approved by the Regional Board, took over seven years to develop and will be implemented over a period of decades.

SRCSO strongly supports a comprehensive monitoring program of water quality and fish and wildlife health, and would encourage the Council to retain this as a near term action and recommendation to all agencies monitoring in the Bay-Delta (CVRWQCB, DWR, IEP, USGS, SFEI, etc.). SRCSD has collaborated with Sacramento Stormwater Quality Partnership since 1991 and formed the Sacramento Coordinated Monitoring Program (CMP). The CMP monitors for approximately 70 water quality parameters at five locations on the Sacramento and American Rivers to understand and enhance the health of these rivers. SRCSD has maintained its support to the CMP and will continue its commitment to developing a regional monitoring program. We encourage the Council to do the same and envision the Council facilitating the development of a regional monitoring program across the multitude of agencies involved with monitoring programs in the Delta.

Appendix III: Submitted Stakeholder and Public Recommendations (Illustrative Only) lists a summary of recommendations to the Council. Stakeholders spend considerable resources to provide comments in the spirit of improving the Interim Plan, and ultimately the Delta Plan. Overall, it would be beneficial, and may help foster improved perception of this process, if the Council created a listing of the stakeholders commenting on all issues and provided a written disposition of those comments. A web link directing stakeholders back to the website to understand whether their comments were considered, accepted or rejected, and why, would be very helpful, and allow transparency in decision making by staff. The listing of summary recommendations alone is inadequate.

Appendix IV: Preliminary Draft Language for Sections 85020 (c), (d), (e), (f), and (g) (Illustrative Only) appears to be the substantive part of the interim plan. SRCSD's comments pertain specifically to Section 85020(e): Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta. SRCSD's purpose is to improve water quality for protecting human health and the environment. Our treatment plant must meet water quality objectives in the Delta every day, and therefore we request you strongly consider our comments and including our recommendations in the second draft version of the Interim Draft where appropriate.

Overall, the issues listed in this section appear to be broad sweeping statements without any references to documents where information supporting these statements can be reviewed, so that readers can verify the accuracy of these statements. As an example, issue number one discusses annual loads of pollutants entering the Bay, but does not acknowledge concentrations, which are the basis for water quality objectives that are relevant to knowing whether any impact to beneficial uses is occurring. Please cite the reference(s) supporting issue number one.

The statement on page A-19 that “Up to 40,000 metric tons of at least 65 different pollutants enter the Bay annually” is sensational and misleading, and should be deleted. This type of aggregation of mass from a broad list of water quality parameters, which likely includes suspended solids, salinity, organic carbon, nutrients, mercury, other metals, pesticides, etc. is impossible to interpret and therefore should be deleted.

Issue number three on page A-19 states that elevated levels of contaminants adversely affect recreation uses. The basis for this statement is unclear and lacking a citation to a source document. Which contaminants adversely affect recreational use? Which beaches in the Bay-Delta have been closed because of water quality concerns, and how often? Any use of the word impaired should be directly connected to the approved Clean Water Act 303(d) listing of impaired water bodies in the Delta.

Issue number four on page A-19 implies that Delta water quality is controlled by waste discharges, tidal action and water circulation, which is inaccurate. It also fails to mention that water quality is also significantly impacted by river inflows, Delta outflow, and water diversions. As a result, this sentence overstates the effect that waste discharges have on water quality. The figures on page A-20 are an excellent depiction of how Delta inflow can affect water quality in relationship to salinity. Delta hydrodynamics are significantly impacted by releases from reservoirs and operation of the water projects.

Issue numbers five, six, and seven, regarding salinity may be better addressed as sub issues under salinity. The CV-SALTS initiative should also be included in Appendix V, plans and projects related to Delta water. On page A-19, the statement that small amounts of salt in urban supplies can negatively affect consumer perception should not be used as a benchmark for salinity management in the Delta. Further, the expectations and perceptions of water users should not be considered to be water quality standards. The notion that salinity levels in wastewater effluent ever make water “unusable” is an over-exaggeration, and should be deleted. Salinity control by wastewater entities is not a feasible, cost effective or energy efficient way to meet salt objectives. The imprecise statement that “slightly higher salinities decrease crop yields” should be clarified or deleted. With the focus on salt levels in the Delta, there should be discussion of the impacts of water project operations, including the proposed peripheral canal and increasing San Joaquin River flows on salt levels, especially in the South Delta.

Issue number eight on page A-20 regarding mercury has partially been addressed due to the Regional Board adoption of the Delta mercury TMDL earlier this year, which should be recognized. Regarding the statements on mercury on Page A-20, we suggest that the Interim Plan recognize that a major concern for increased mercury levels in fish is due to wetland creation and other habitat enhancement projects as proposed under BDCP.

Statements made under Issue number 11 on page A-20 and A-21 regarding organic carbon and the production of carcinogenic byproducts is misleading. Drinking water agencies are required to treat surface water to limit the levels of trihalomethanes in delivered water. The real issue is whether management of organic carbon levels in Delta waters could result in operational cost savings to drinking water agencies. A study by Malcolm Pirnie for the Central Valley Drinking Water Policy Work Group, which is incomplete, may shed some light on this issue.

Issue number 12 regarding nutrients, should include discussion of agricultural discharges in the San Joaquin Valley as a contributor to nutrient levels in the Delta. Nutrient loads do not all originate from “upstream dischargers.”

The Interim Plan states that the performance measures and targets will reflect priorities for immediate action in the interim, and none of the listed performance measures are related to immediate actions. Most of the performance measures appear to be simply things that can be counted, only a few are related back to aquatic species, and none relate to environmental relevance. Most importantly ambient water quality concentrations and trends should be included because those water quality concentrations can be compared to standards, and related to the environmental relevance of a particular constituent in terms of beneficial use impacts.

The first and last performance measures are the same, one should be deleted. Does a contaminant precursor mean constituents that can create disinfection by products as part of the drinking water treatment process?

It should be noted that nuisance growths of algae or aquatic plants are clearly related to Delta hydrodynamics, residence times, and temperatures.

The performance measure related to the concentrations of contaminants in urban runoff and agricultural drainage should be modified. The important metric is ambient concentrations, rather than concentrations in sources which may have little effect on ambient levels.

It is unclear how toxicity to aquatic life using standard species and methods would be employed as a performance measure. Results from different tests at different locations using different test organisms and end points over time would be difficult to interpret.

Three of the measures call for concentration measurements from a 2008 baseline. What is the scientific basis for selecting 2008 as a baseline?

New waterbodies may be added to the Clean Water Act 303(d) list due to exceedences of water quality standards for specific contaminants for that water body. The number of new contaminants added to the 303(d) list is not a good performance measure, since it is more often dependent on changes in standards or adoption of new standards, rather than changes in ambient water quality levels. Reduced numbers of 303(d) listings is a better performance measure.

Meaningful performance measures can help measure the effectiveness of the action(s) in relationship to the environment, both public health and the ecosystem. Performance measures created through an adaptive management processes tend to provide a better basis to judge whether actions taken to restore the Delta are actually working. The BDCP is currently developing a monitoring and metrics section of the Habitat Conservation Plan. The Interim Plan should explain how Interim Plan measures relate to the BDCP measures.

Conclusion

SRCS is proud of its environmental stewardship role in protecting the environment and our watershed for future generations. We believe environmental stewardship is good business, a public trust responsibility, and key to achieving sustainable outcomes. Motivated by a strong environmental ethic, dedicated staff throughout our organization lead the way in environmental action founded on

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the latest scientific research. SRCSD is committed to ensuring sound science is a basis for decisions regarding ecosystem protection and water supply in the Delta.

SRCSD recognizes the challenges facing the Council, and the need for timely action. We also appreciate the considerable staff effort that brings many relevant considerations into one place in the first draft of the Interim Plan. But we believe the Interim Plan should be much more focused and tailored on near term actions, and that such an approach is far more likely to lead to progress.

Thank you for considering SRCSD comments. Should the Council staff have any questions about these comments please contact me at 916-876-6105, deans@sacsewer.com, or contact Terrie Mitchell at 916-876-6092, mitchellt@sacsewer.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Dean". The signature is fluid and cursive, with the first name "Stan" being more prominent than the last name "Dean".

Stan Dean
District Engineer

cc: Terrie Mitchell, Manager Legislative and Regulatory Affairs
Prabhakar Somavarapu, Director Policy and Planning